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September 21, 2004

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**TO: Examiner Michael B. Priddy
USPTO, Art Unit 3732
Fax No.: 703-872-9306**

**FR: Jonathan Spangler, Esq.
Tel.: 858-271-7070, Ext. 136 (or Cell 858-243-0029)**

RE: Pat. App. Ser. No. 10/032,121

Pages to Follow: 6

Examiner Priddy:

Per our conversation on September 8, 2004, accompanying please find the following documents (which I hereby certify are being facsimile transmitted to the US Patent and Trademark Office on September 21, 2004 under the Certificate of Transmission provisions of 37 CFR 1.8):

1. Transmittal Form (1 page);
2. Fee Transmittal form authorizing payment of \$65.00 fee for late filing fee or oath (1 page); and
3. Executed Declaration (4 pages).

Thanks again for your courtesy in contacting me with the deficiency in the submitted declaration. Please contact me with any questions or comments.

With thanks,

Jonathan Spangler
Chief Patent Counsel

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PTO/SB/21 (09-04)

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

6

Application Number

10/032,121

Filing Date

December 21, 2001

First Named Inventor

James T. McKinley

Art Unit

3732

Examiner Name

Michael B. Pridy

Attorney Docket Number

090US2

ENCLOSURES (Check all that apply)

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/
Incomplete ApplicationReply to Missing Parts
under 37 CFR 1.52 or 1.53

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a
Provisional Application

Power of Attorney, Revocation



Change of Correspondence Address



Terminal Disclaimer



Request for Refund



CD, Number of CD(s) _____

☐ Landscape Table on CD

Remarks



After Allowance Communication to TC

Appeal Communication to Board
of Appeals and InterferencesAppeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify
below):

1. Executed Declaration (4 pgs)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

NuVasive, Inc

Signature

Printed name

Jonathan Spangler

Date

September 21, 2004

Reg. No.

40,182

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

Jonathan Spangler

Date

September 21, 2004

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PTO/SB/17 (10-03)

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**FEE TRANSMITTAL
for FY 2004**

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$)**65.00****Complete if Known**

Application Number	10/032,121
Filing Date	December 21, 2001
First Named Inventor	James T. McKinley
Examiner Name	Michael B. Priddy
Art Unit	3732
Attorney Docket No.	090US2

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number
50-2040Deposit Account Name
NuVasive, Inc.

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$)**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	-20** =	X	
Multiple Dependent	-3** =	X	

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1202 18	2202 9	Claims in excess of 20	
1201 86	2201 43	Independent claims in excess of 3	
1203 290	2203 145	Multiple dependent claim, if not paid	
1204 86	2204 43	** Reissue independent claims over original patent	
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	65.00
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,620	1812 2,620	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) **65.00****SUBMITTED BY**

Name (Print/Type)	Jonathan Spangler	Registration No. (Attorney/Agent)	40,182	Telephone	858-243-0029
Signature		Date	September 21, 2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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PTO/SB/01 (09-04)

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DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)		Attorney Docket Number	090US2
		First Named Inventor	James T. McKinley
		COMPLETE IF KNOWN	
		Application Number	10/032,121
		Filing Date	December 21, 2001
<input type="checkbox"/> Declaration Submitted With Initial Filing OR <input checked="" type="checkbox"/> Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)		Art Unit	3732
		Examiner Name	Michael B. Priddy

I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Bone Blocks and Methods for Inserting Bone Blocks into Intervertebral Spaces

(Title of the Invention)

the specification of which

☐ is attached hereto

OR

☒ was filed on (MM/DD/YYYY) 12/21/2001 as United States Application Number or PCT International

Application Number 10/032,121 and was amended on (MM/DD/YYYY) 06/02/2004 (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

[Page 1 of 2]

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DECLARATION — Utility or Design Patent Application

Direct all correspondence to: <input checked="" type="checkbox"/> Customer Number: <input type="text" value="90328"/>		OR <input type="checkbox"/> Correspondence address below	
Name			
Address			
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Country	Telephone	Fax	
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.			
NAME OF SOLE OR FIRST INVENTOR:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
James T.		McKinley	
Inventor's Signature <i>James T. McKinley</i>		Date <i>Sept 16, 2004</i>	
Residence: City	State	Country	Citizenship
Woodside	CA	USA	US
Mailing Address			
17560 Skyline Blvd			
City	State	ZIP	Country
Woodside	CA	94082	USA
NAME OF SECOND INVENTOR:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
James		Marino	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
La Jolla	CA	USA	US
Mailing Address			
2820 St. Tropez Place			
City	State	ZIP	Country
La Jolla	CA	92037	USA
<input checked="" type="checkbox"/> Additional inventors or a legal representative are being named on the supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.			

[Page 2 of 2]

PTO/SB/01 (08-03)

Approved for use through 07/31/2003. OMB 0501-0002

U.S. Patent and Trademark Office U.S. DEPARTMENT OF COMMERCE

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Name			
Address			
City		State	ZIP
Country	Telephone	Fax	
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.			
NAME OF SOLE OR FIRST INVENTOR:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
James T.		McKinney	
Inventor's Signature			Date
Residence: City	State	Country	Citizenship
Woodside	CA	USA	US
Mailing Address			
17560 Skyline Blvd			
City	State	ZIP	Country
Woodside	CA	94062	USA
NAME OF SECOND INVENTOR:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
James		Marino	
Inventor's Signature			Date
<i>James F. Marino, Jr.</i>			9/19/04
Residence: City	State	Country	Citizenship
La Jolla	CA	USA	US
Mailing Address			
2820 St. Tropez Place			
City	State	ZIP	Country
La Jolla	CA	92037	USA
<input checked="" type="checkbox"/> Additional inventors or a legal representative are being named on the 1 supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.			

(Page 2 of 2)

Received Sep-10-2004 06:40pm

From

To: NuVasive Inc,

Page 002

TOTAL P. 02

PTO/SB/02A (08-03)

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DECLARATION	ADDITIONAL INVENTOR(S) Supplemental Sheet
Page <u>9</u> of <u>9</u>	

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor.	
Given Name (first and middle (if any))		Family Name or Surname	
Corbett		Stone	
Inventor's Signature <i>Corbett W Stone</i>		Date <i>9/20/04</i>	
San Diego Residence: City	CA State	USA Country	US Citizenship
16820 Bernardo Center Drive Mailing Address			
Mailing Address			
San Diego City	CA State	92127 Zip	USA Country
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor.	
Given Name (first and middle (if any))		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
Mailing Address			
City	State	Zip	Country
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor.	
Given Name (first and middle (if any))		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
Mailing Address			
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